The Baltimore Sun Company *and* Washington-Baltimore Newspaper Guild, Local 35, The Newspaper Guild, AFL–CIO–CLC. Case 5–CA–18999

April 4, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On September 28, 1988, Administrative Law Judge Leonard M. Wagman issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party Union each filed an answering brief to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

Since about 1957, the Union has been the exclusive collective-bargaining representative for a unit of approximately 780 employees employed in the news, editorial, circulation, business, advertising, and building departments of the Employer's newspaper published in Baltimore, Maryland. The Respondent and the Union had a collective-bargaining agreement that was scheduled to expire on June 9, 1987.[1] The parties, however, extended that agreement through June 10. On June 11, after the contract expired, the Union began an economic strike against the Employer. The parties subsequently entered into a new collective-bargaining agreement that was effective from June 19, 1987, until June 18, 1990.

During the hiatus between the collective-bargaining agreement that expired on June 10 and the June 19 effective date of the successor, approximately 50 bargaining unit employees sent the Union letters, with copies to the Respondent, resigning their union membership.[2] Of these 50 employees, approximately 16 employees also revoked the dues-checkoff authorizations they had signed. It is undisputed that the remaining 34 employees did not revoke their dues-deduction authorizations.[3]

In June,[4] the Respondent, without prior notice to the Union, ceased deducting and remitting dues to the Union for the 34 employees who had resigned from the Union without revoking their dues-checkoff authorizations. The Respondent, as of the date the hearing was held in this case, persisted in its refusal to honor the checkoff authorizations executed by these employees. The General Counsel and the Union contend that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to deduct and forward to the Union monthly dues for the 34 employees who did not expressly revoke their checkoff authorizations.

The judge agreed with the General Counsel and the Union that the Respondent's conduct was unlawful. In so concluding, the judge stressed that in *Machinists Local 2045 (Eagle Signal)*, 268 NLRB 635, 637 (1984), the Board stated, regarding the impact of employee resignations from union membership on dues-checkoff authorizations, that:

> [A] resignation will, by operation of law, revoke a checkoff authorization, even absent a revocation request, where the authorization itself makes payment of dues a quid pro quo for union membership. This is so whether or not the resignation is made during the period for revocation set forth in the authorization itself.

The judge also noted, however, that in *Frito-Lay, Inc.*, 243 NLRB 137, 139 fn. 3 (1979), and other like cases, the Board has held that resignation from a labor organization does not revoke the dues-deduction authorization, where there was no showing that the employee

[1] All dates are in 1987, unless otherwise noted.

[2] The maintenance-of-membership requirement was the same under both the collective-bargaining agreement that expired on June 10, 1987, and its successor. The requirement was that those employees who were members on the effective date of the agreement and 8 out of 10 new hires had to become and/or remain members during the life of the agreement.

[3] Of these employees, 29 executed authorization forms bearing the following language:

> I hereby authorize and direct The A.S. Abell Publishing Company [the Employer's predecessor] to deduct from any salary or other earnings standing to my credit on its books at the end of each payroll week of each calendar month following the date of this authorization the amount of current dues payable by me to the Washington-Baltimore Newspaper Guild during such calendar month according to the certified schedule filed by the Guild with the A.S. Abell Publishing Company.
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> I further authorize and direct the A.S. Abell Publishing Company to remit all sums so deducted to the Washington-Baltimore Newspaper Guild.
>
> This assignment and authorization shall remain in effect until revoked by me, but shall be irrevocable for a period of one year from the date appearing above or until the termination of the collective bargaining agreement between yourself and the Guild, whichever occurs sooner. I further agree and direct that this assignment and authorization shall be continued automatically and shall be irrevocable for successive periods of one year each or for the period of each succeeding applicable collective bargaining agreement between yourself and the Guild, whichever period shall be shorter, unless written notice of its revocation is given by me to yourself not more than thirty (30) days and not less than fifteen (15) days prior to the expiration of each period of one year, or of each applicable collective bargaining agreement between yourself and the Guild, whichever occurs sooner. Such notice of revocation shall become effective for the calendar month in which you receive it.
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> I agree to save The A.S. Abell Publishing Company harmless against any and all claims and liability for or on account of the deductions made from my salary or other earnings and remitted to the Washington-Baltimore Newspaper Guild pursuant to the terms of thus [sic] authorization.
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> The language of the remaining five signed authorizations contain a minor variance (noted by the judge) from the format set forth above that is not material here.

[4] Although the judge found that ''effective June 1, 1987'' the Respondent ceased deducting and remitting dues for these employees, we note that the parties here entered into a stiplulation at the hearing providing simply that the Respondent ceased these payments to the Union ''in June.''

received union membership as consideration for executing that authorization.

Based on the express language of the dues-checkoff authorizations in this case, quoted above, the judge concluded that the employees continued to be bound by these authorizations regardless of whether or not they remained union members. Thus, the judge found that the Respondent violated Section 8(a)(5) and (1) of the Act by its failure and refusal to continue deducting and forwarding dues to the Union on behalf of those 34 employees who had resigned from the Union without revoking their dues-checkoff authorizations.

In *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*,[5] the Board acknowledged judicial criticism of the *Eagle Signal* analysis[6] and set forth a new test for determining the effect of an employee's resignation from union membership on that employee's dues-checkoff authorization. The Board in *Lockheed* found that an employee may voluntarily agree to continue paying dues pursuant to a checkoff authorization even after resignation of union membership. In fashioning a test to determine whether an employee has in effect agreed to do so, the Board recognized the fundamental policies under the Act guaranteeing employees the right to refrain from belonging to and assisting a union, as well as the principle set forth by the Supreme Court that waiver of such statutory rights must be clear and unmistakable.[7] In order to give full effect to these fundamental labor policies, the Board stated that it would

> construe language relating to a checkoff authorization's irrevocability—i.e., language specifying an irrevocable duration for either 1 year from the date of the authorization's execution or on the expiration of the existing collective-bargaining agreement—as pertaining only to the *method* by which dues payments will be made *so long as dues payments are properly owing*. We shall not read it as, by itself, a promise to pay dues beyond the term in which an employee is liable for dues on some other basis. Explicit language within the checkoff authorization clearly setting forth an obligation to pay dues even in the absence of union membership will be required to establish that the employee had bound himself or herself to pay the dues even after the resignation of membership. [302 NLRB at 328–329.][8]

Applying the analysis of *Lockheed* to the facts in this case, we find that the General Counsel has failed to show that the dues-checkoff authorizations the 34 disputed employees signed obligated them to pay dues after they effectively resigned their memberships in the Union. As in *Lockheed*, all that these employees clearly agreed to do was to allow certain sums to be deducted from their wages and remitted to the Union for payment of their ''current dues.'' They did not clearly agree to have deductions made even after they had submitted their resignation from union membership. We thus find that these partial wage assignments made by the 34 employees at issue here were conditioned on their union membership and were revoked when they ceased being union members. In so concluding, we stress that *Lockheed* imposes no requirement that, in addition to resigning from the Union, employees must also formally revoke their dues-deduction authorizations before such authorizations are no longer effective. Thus, on the facts here, we conclude that by simply resigning their union memberships the 34 employees named in the complaint terminated their dues-deduction authorizations just as effectively as the 16 other employees who both resigned from the Union and revoked their authorizations.

Based on our finding that the disputed 34 employees revoked their dues-checkoff authorizations by resigning from the Union, we conclude that the Respondent did not violate Section 8(a)(5) by failing and refusing to deduct and remit monthly dues for these employees covering periods after they resigned.[9] We therefore shall dismiss the instant complaint in its entirety.

ORDER

The complaint in this case is dismissed.

[5] 302 NLRB 322 (1991).

[6] See *NLRB v. Postal Service*, 833 F.2d 1195 (6th Cir. 1987); *NLRB v. Postal Service*, 827 F.2d 548 (9th Cir. 1987).

[7] *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983).

[8] In *Lockheed*, the Board left open the question of how its waiver rule would apply in the context of a lawful union-security provision. Here, the contract between the Respondent and the Union had expired on June 10, 1987. Thus, although there had been a valid union-security clause in the parties' expired contract, the clause did not remain in effect during the hiatus between contracts when these employees resigned. See *Transit Union Local 1225 (Greyhound Lines)*, 285 NLRB 1051, 1052 (1987). In the absence of a union-security clause requiring union membership here, the *Lockheed* test is applicable to this case.

[9] Although these 34 employees resigned from the Union between June 11 and June 18, 1987, the record fails to establish whether the Respondent remitted to the Union payments for the month of June 1987 which may have been owed by these employees. In this regard, we emphasize that during the hearing the parties entered into a stipulation that the Respondent failed and refused to deduct and remit dues for these employees beginning in June 1987 after they had resigned their union memberships based upon letters from the employees received by the Respondent and that the alleged refusal to bargain concerned only ''the discontinuance of checkoff for'' those employees, and ''not about any other matters.'' We find on the facts here that the evidence is insufficient to support a finding that the Respondent violated the Act by failing to make dues-deduction payments for any period in June 1987 before the employees resigned from the Union, particularly since neither the General Counsel nor the Union has argued this theory of a violation at any time here.

Harvey A. Holzman, Esq., for the General Counsel.
N. Peter Lareau, Esq. (Venable, Baetjer & Howard), of Baltimore, Maryland, for the Respondent.
Robert E. Paul, Esq. (Zwerdling, Paul, Leibig, Kahn & Thompson, P.C.), of Washington, D.C., for the Charging Party.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge. Upon a charge filed on July 20, 1987, and an amended charge filed on August 27, 1987, by the Charging Party, Washington-Baltimore Newspaper Guild, Local 35, The Newspaper Guild, AFL–CIO–CLC (the Union), the Regional Director for Region 5, issued a complaint and notice of hearing against the Respondent, The Baltimore Sun Company (the Company), on September 3, 1987. The complaint alleged that the Company violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by unilaterally discontinuing the deduction of union dues from the wages of employees represented by the Union, notwithstanding that those employees had not revoked their dues checkoff. The Company, by its answer to the complaint, denied commission of the alleged unfair labor practices.

I held the hearing in this case on March 14, 1988, at Baltimore, Maryland. On the entire record, and the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material to this case, the Company, a Maryland corporation, with an office and place of business in Baltimore, Maryland, has published, circulated, and distributed The Sun, The Evening Sun, and the Sunday Sun Newspapers in the Baltimore, Maryland area. During the 12 months ending September 1, 1987, the Company, in the course and conduct of its business operations, realized gross revenues exceeding $200,000, held membership in or subscribed to various interstate news services, including Associated Press, published various nationally syndicated features, including those written by Gary Wells, and advertised nationally sold products, including automobiles. I find that the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

Since 1957, the Union has been the recognized collective-bargaining agent for a unit of the approximately 780 employees of the Company's news, editorial circulation, business, advertising, and building departments. The Company[1] and the Union have been parties to a series of collective-bargaining agreements.

The 3-year collective-bargaining agreement, effective from June 10, 1984, was scheduled to expire on June 9, 1987. However, the parties extended it through June 10, 1987. On June 11, 1987, the Union began an economic strike. The parties entered into the current 3-year contract, effective June 19, 1987.

[1] Prior to its purchase by The Times-Mirror Company, in 1986, the Company's name was A.S. Abell Publishing Company. After the purchase, the Company assumed its current name, The Baltimore Sun Company.

During the period between the expiration of the 1984 contract and the effective date of the 1987 contract, approximately 50 bargaining unit employees, by letter to the Union, and copies to the Company, resigned from the Union. Approximately 16 of the 50 employees also revoked their dues-deduction authorizations. Thirty-four unit employees did not revoke their dues-deduction authorizations.

Effective June 1, 1987, the Company, without prior notice to the Union, ceased deducting and remitting dues to the Union for the 34 employees who had resigned from the Union without revoking their deduction authorizations. The Company continued to refuse to deduct dues for those 34 employees as of the time of the hearing before me.

Article 4 of the 1984 agreement, entitled ''Dues Checkoff and Union Membership'' provided in pertinent part:

> **Section 4.1—Checkoff Authorization**. Any employee may voluntarily file with the Publisher in the form set forth in Section 4.2 of this Article, a written authorization and direction to deduct, from the employee's salary or other earnings, current Guild dues, as certified to the Publisher by the Guild from time to time. Such Authorization may be revoked by the employee only in the manner provided in the form set forth in Section 4.2 of the Article. The Guild will file with the Publisher, no later than the last day of each calendar month, a schedule certified by its treasurer showing the amount of current dues payable during the next succeeding month by employees in each pay group. The Publisher will make deduction from the salaries or other earnings of employees in accordance with said authorization and schedules filed hereunder by employees or the Guild, but it assumes no responsibility either to the employees or the Guild in the event that, through inadvertence or errors, it shall fail to do so in any instance. All sums so deducted shall be remitted by the Publisher as promptly as possible to the Guild, but not later than the fifteenth (15th) day of the following month.
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> **Section 4.2—Dues Deduction Authorization Form**. A dues deduction authorization shall be filed in the following form:
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> Baltimore, Maryland
> (Date of Authorization)
>
> I hereby authorize and direct The A.S. Abell Publishing Company to deduct from any salary or other earnings standing to my credit on its books in each week following the date of this authorization the amount of current dues payable by me to the Washington-Baltimore Newspaper Guild during such calendar week, according to the certified schedule filed by the Guild with The A.S. Abell Publishing Company.
>
> I further authorize and direct The A.S. Abell Publishing Company to remit all sums so deducted to the Washington-Baltimore Newspaper Guild.
>
> This assignment and authorization shall remain in effect until revoked by me, but shall be irrevocable for a period of one year from the date appearing above or until the termination of the collective bargaining agreement between yourself and the Guild, which ever occurs sooner. I further agree and direct that this assignment

and authorization shall be continued automatically and shall be irrevocable for successive periods of one year each or for the period of each succeeding applicable collective bargaining agreement between yourself and the Guild, whichever period shall be shorter, unless written notice of it's revocation is given by me to yourself not more than thirty (30) days and not less than fifteen (15) days prior to the expiration of each period for one year, or of each applicable collective bargaining agreement between yourself and the Guild, whichever occurs sooner. Such notice of revocation shall become effective for the calendar month following the calendar month in which you receive it.

I agree to save The A.S. Abell Publishing Company harmless against any and all claims and liability for or on account of the deductions made from my salary or other earnings and remitted to the Washington-Baltimore Newspaper Guild pursuant to the terms of this authorization.

_____ _____

Signature of Employee Signature of Witness

Section 4.3—Union Membership

(a) **Current Members**. All employees who are members of the Guild as of the date of execution of this Agreement shall, as a condition of employment, maintain membership in the Guild by tendering periodic dues for the duration of this Agreement.

(b) **New Employees**. Not fewer than eight (8) out of ten (10) new employees hired after the date of execution of this Agreement within the jurisdiction of the Guild, without regard to department, shall, as a condition of employment, become members of the Guild not later than the thirty-first (31st) day following employment, by tendering initiation fees and periodic dues and shall maintain such membership for the duration of this Agreement.

(c) **Failure to Tender Dues**. Any present employee who fails to tender periodic dues to maintain membership under Section (a) above or any future employee who is required under Section (b) above to become a member and who fails to tender initiation and periodic dues in order to become a member and maintain membership shall be discharged by the Publisher after two (2) weeks' written notice from the Guild unless the employee has complied within the two-week period.

Section 4.4—Information at Hiring. At the time of hire, the Publisher shall provide each new employee covered by the Guild with a copy of the union security provisions in Section 4.3(b) of the collective bargaining Agreement.

Article 4 of the 3-year collective-bargaining agreement, which became effective on June 19, 1987, contains the language quoted above. However, the 1987 contract refers to The Baltimore Sun Company instead of The A.S. Abell Publishing Company.

Of the 34 employees who resigned from the Union without revoking their dues-checkoff authorizations, 29 had executed forms bearing the following language:

Baltimore, Maryland

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Date of Authorization

I hereby authorize and direct the A.S. Abell Company to deduct from any salary or other earnings standing to my credit on its books at the end of each payroll week of each calendar month following the date of this authorization the amount of current dues payable by me to the Washington-Baltimore Newspaper Guild during such calendar month according to the certified schedule filed by the Guild with the A.S. Abell Company.

I further authorize and direct the A.S. Abell Company to remit all sums so deducted to the Washington-Baltimore Newspaper Guild.

This assigment and authorization shall remain in effect until revoked by me, but shall be irrevocable for a period of one year from the date appearing above or until the termination of the collective bargaining agreement between yourself and the Guild, whichever occurs sooner. I further agree and direct that this assignment and authorization shall be continued automatically and shall be irrevocable for successive periods of one year each or for the period of each succeeding applicable collective bargaining agreement between yourself and the Guild, whichever period shall be shorter, unless written notice of its revocation is given by me to yourself not more than thirty (30) days and not less than fifteen (15) days prior to the expiration of each period of one year, or of each applicable collective bargaining agreement between yourself and the Guild, whichever occurs sooner. Such notice of revocation shall become effective for the calendar month in which you receive it.

I agree to save the A.S. Abell Company harmless against any and all claims and liability for or on account of the deductions made from my salary or other earnings and remitted to the Washington-Baltimore Newspaper Guild pursuant to the terms of this authorization.

_____ _____

Signature of Employee Signature of Witness

The language of the remaining five executed checkoff authorizations contain a minor variance from the format set forth above. Thus, while the second and third lines of the predominant format read ''end of each payroll week of each calender month,'' the five variants, at the same place, read ''end of the first full payroll week of each calendar month.''

I also note minor variations between the checkoff authorization format quoted above and that included in the 1984 and the 1987 collective-bargaining agreements.

B. *Analysis and Conclusion*

The General Counsel and the Union contend that the Company has violated Section 8(a)(5) and (1) of the Act by refusing to continue checking off membership dues for the 34 employees listed in the complaint, who resigned their union membership and did not also expressly revoke their checkoff authorization. The General Counsel argues that under Board law such a resignation is effective to revoke a checkoff au-

thorization only when the language of the authorization itself makes payment of union dues the quid pro quo for membership, and that such language is missing in this case. The Company urges me to find that the checkoff authorizations permitted it to treat the resignations as revocation of those authorizations.

Contrary to the General Counsel and the Union, the Company finds the necessary quid pro quo, by looking at the dues-deduction authorization, the negotiations leading up to the 1987 contract, and the language of section 4.3 of the 1987 contract. In the alternative, the Company contends that even if the resignation did not automatically revoke the checkoff authorization, the 34 employees had resigned from the Union and owed no dues. Therefore, according to the Company, it was not obliged to deduct anything.

In *Machinists Local 2045 (Eagle Signal)*, 268 NLRB 635, 637 (1984), the Board stated its well-settled rule regarding the impact of employee resignations from union membership on dues-checkoff authorization as follows:

> It is established Board law that a dues-checkoff authorization . . . is a contract between an employee and his employer and that a resignation of union membership ordinarily does not revoke a checkoff authorization. However, a resignation will, by operation of law, revoke a checkoff authorization, even absent a revocation request, where the authorization itself makes payment of dues a quid pro quo for union membership. This is so whether or not the resignation is made during the period for revocation set forth in the authorization itself.

Applying the quoted rule in *Auto Workers Local 128 (Hobart Corp.)*, 283 NLRB 1175 (1987), the Board found that a union violated the Act by continuing to demand and to accept payment of dues pursuant to a checkoff authorization after an employee had resigned from the union. In reaching this result, the Board focused its attention on the employee's dues-checkoff authorization which provided for the withholding from the employee's pay of ''such sums as the Financial Officer of the union may certify as due and owing from [the employee] as membership dues, including an initiation or reinstatement fee and monthly dues in such sum as may be established from time to time as union dues.'' *Auto Workers Local 128*, supra at 1176. The Board noted the inclusion of ''membership dues'' in the authorization and held that payment of dues under that assignment was the ''quid pro quo for union membership.'' 283 NLRB 1175 at 1177. The Board further held that the employee's resignation from the union also terminated his dues-checkoff authorization and that the union's continuing demand and acceptance of dues from him violated Secton 8(b)(1)(A) of the Act. *Auto Workers Local 128*, supra at 1176.

The Board's analysis in *Auto Workers Local 128* is consistent with its treatment of dues-checkoff authorizations in *Eagle Signal*, and similar cases, in which the checkoff authorization form clearly indicated that the employee expected union membership in return. E.g., *Transit Union Local 1225 (Greyhound Lines)*, 285 NLRB 1051 (1987); *Food & Commercial Workers Local 425 (Hudson Foods)*, 282 NLRB 1413, 1414 (1987). However, absent a showing that membership was expected as consideration for a checkoff authorization, the Board has held that resignation from a union does not automatically revoke the authorization. *American Nurses' Assn.*, 250 NLRB 1324, 1331 (1980); *Frito Lay, Inc.*, 243 NLRB 137, 139 fn. 3 (1979); *Shen-Mar Food Products*, 221 NLRB 1329 (1976), enfd. as modified on other grounds 557 F.2d 396 (4th Cir. 1977).

Focusing on the dues-checkoff authorization in this case, I find that it does not link payment of dues to union membership. The employees were bound by their dues-deduction authorizations without regard to membership in the Union. Therefore, the Company was not at liberty to terminate its obligation to deduct and remit dues to the Union under the 1984 and 1987 contracts, when the 34 employees issue resigned from the Union, but did not revoke their dues-checkoff authorization. The Company, by its failure and refusal to deduct union dues from the pay of the employees, whose names appear in the appendix, engaged in unlawful interference under Section 8(a)(1) of the Act and violated its bargaining duty under Section 8(a)(5) of the Act. *Shen-Mar Food Products*, supra.

CONCLUSIONS OF LAW

1. The Company, The Baltimore Sun Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Washington-Baltimore Newspaper Guild, Local 35, The Newspaper Guild, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Company has committed unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act by failing and refusing to check off union dues pursuant to valid checkoff authorization and to remit those dues to the Union pursuant to the collective-bargaining agreement in effect between the Union and the Company.

THE REMEDY

Having found that the Company engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, I shall recommend that it be ordered to cease and desist from such conduct and to take certain affirmative action designed to effectuate the purposes of the Act. Having found that the Company violated Section 8(a)(1) and (5) of the Act by failing and refusing to check off union dues pursuant to valid checkoff authorizations, I shall recommend that the Company be ordered to honor the contract checkoff provision and the valid dues-checkoff authorizations filed with it, and remit to the Union dues it should have checked off pursuant to the collective-bargaining agreement in effect between the parties, together with interest on the amounts due, to be computed in the manner prescribed in *New Horizons for the Retarded*.[2] Finally, I shall recommend that the Company be ordered to post appropriate notices to its employees.

[Recommended Order omitted from publication.]

[2] In accordance with the Board's decision in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), interest on the dues which should have been checked off on and after January 1, 1987, shall be computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1987 amendment to 26 U.S.C. § 6621.